

SOUTH AFRICA / JUDGMENT

Mzimba v Road Accident Fund (59973/2019) [2020] ZAGPPHC 532 (20 July 2020)

[2020] ZAGPPHC 532

COURT

North Gauteng High Court, Pretoria

BEFORE

Erasmus AJ

CASE / FILE NUMBER

59973/2019

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Policy**IN**

**THE HIGH COURT OF SOUTH AFRICA
(GAUTENG
DIVISION, PRETORIA)**

REPORTABLE:

YES/NO

OF

INTEREST TO OTHERS JUDGES: YES/NO

REVISED

CASE

NUMBER: 59973/2019

In

the matter between:

JOSEPH

OUPA

MZIMBA

Plaintiff

And

ROAD ACCIDENT FUND

Defendant

JUDGMENT

ERASMUS AJ

INTRODUCTION

1. This matter, set down for trial before me on 14 July 2020, is a claim against the Road Accident Fund, the defendant, for damages arising out of a motor vehicle collision.
2. The accident allegedly occurred or on about 19 November 2013, at approximately 11h00, on the gravel road at Pitse Lodge, Welgevonden

Game Reserve, district Vaalwater in the province of Limpopo. The accident occurred when a motor vehicle in the form a tractor

loader backshoe (herein after referred to as “the TLB”), driven at the time by Ronald Nyalunga (herein after referred to as “the insured driver”), alternatively by Cedric Mahkowho. The plaintiff claims that he was a passenger in the loader bucket of the TLB. [1]

3. The plaintiff claims that the accident is as a result of the fact that the insured driver lost control of the TLB, causing the loader bucket to flip. [2] The TLB then drove over his right shoulder which caused him to sustain injuries.

EVENTS LEADING UP FOR THE MATTER TO BE ALLOCATED TO 14 JULY 2020 AND DEFENDANT’S KNOWLEDGE THAT THE MATTER WILL PROCEED TO TRIAL

4. The matter was set down before me during the June / July 2020 recess.
5. During the Zoom meeting that was arranged for the hearing of the matter on 14 July 2020, as well as in the Plaintiff’s heads of argument that was filed and uploaded on the Case Lines system, on 15 July 2020, it was indicated to me that:

5.1 the matter was previously on the trial roll on 4 February 2020. The Notice of Set Down for the trial date was served on or about 14 March 2018. [3] The Notice of Set Down was served on TM Chauke Attorneys Inc, who represented the defendant at that stage;

5.2 On 4 February 2020 the plaintiff did seek an allocation of the matter; [4]

5.3 On 4 February 2020 there were no judges available, and the trial was postponed to 30 June 2020, the costs to be costs in the cause; [5]

5.4 On 4 February 2020 the defendant was duly represented by both an attorney and counsel and they are fully aware of the date of postponement;

5.5 Despite the fact that the defendant was duly represented on the 4th of February 2020, the attorneys of the plaintiff served and filed a Notice of Set Down for the proceedings of 30 June 2020 on the

attorneys of the defendant. This notice was served on 20 February 2020; [6]

5.6 The matter was automatically removed from the trial roll of 30 June 2020 and re-enrolled on 14 July 2020 in accordance with paragraph 7.2 of the Judge President's Consolidated Directives dated 11 May 2020; [7]

5.7 On 7 July 2020 the attorney acting on behalf of the plaintiff, and via email, sent the Notice of Set Down of the proceedings 14 July 2020 to the Claims Handler purportedly in the employ of the defendant; [8]

5.8 The same Notice of Set Down was also sent to the CM Chauke Attorneys Inc on the 7th of July 2020. At this juncture I need to state that CM Chauke Attorneys Inc are still the attorneys on record of the defendant, but the defendant failed to provide its attorneys of record with any instructions in this matter; [9]

5.9 The Claims Handler who is purportedly in the employ of the defendant, was also invited to the Caselines system. [10]

6. On my insistence on the morning of 14 July 2020 the matter stood down in order to ensure that the defendant is aware that the matter is allocated to me, and that the matter will proceed. I was informed that there was further communication between the legal team of the plaintiff and the defendant in order to make them aware that the matter is allocated to me and that the matter is proceeding to trial. The trial only commenced later in the morning, and not 10h00 as it was supposed to. The defendant was therefore given ample opportunity to attend to the hearing, or to provide their attorneys of record with instruction to attend to the trial.
7. I am satisfied that the defendant is aware of the date and that matter will proceed to trial on 14 July 2020, and I therefore allowed the plaintiff to proceed. I need to note that the defendant did not at any stage approach me to seek a postponement of the matter. The defendant simply failed to appear before me, or to provide their attorney of record with instruction to appear

before me. The defendant simply seem to be in wilful default to attend the proceedings.

8. At this point I also need to pause and mention that what also urged me to proceed with the trial is the fact that the plaintiff only wished to proceed with the merits portion of the trial, and not the quantum. So even though I am cautious as I am dealing with public funds, no monetary order will be made at this stage.
9. I will later in more detail deal with the merits of the matter, and the defence that was raised on the pleadings, but before me is a proverbial 1%-er. I only have to find 1% negligence on the side of the insured driver in order for the plaintiff to succeed with his claim.

10. On the pleadings the defendant simply does not raise any triable defence, not even for an apportionment. In fact, it is admitted in the plea that the insured driver of the vehicle in which the plaintiff was the passenger was negligent and the sole cause of the accident. I cannot interpret the pleadings in any other way. I am therefore somewhat puzzled why the defendant did not deal with the merits of this matter earlier, which would have resulted in the saving of trial costs for the issue of merits.
11. The defendant is therefore not prejudiced with the trial proceeding only on the question of merits.

SPECIAL PLEAS RAISED BY THE DEFENDANT

12. The defendant raised three (3) special pleas on its plea.
13. In none of the pre-trials did the defendant indicate that it persists with the special pleas. The defendant also failed to appear before me, advancing arguments on the special pleas.
14. Despite this, I have requested Adv Percival who appeared on behalf of the plaintiff, to file heads of argument and to deal with the special pleas. I will briefly deal with the special pleas.

SPECIAL PLEA : JURISDICTION

15. The defendant raised a special plea of jurisdiction and it pleaded as follows:

“AD JURISDICTION:

Defendant pleads that the above Honorable Court does not have jurisdiction as contemplated in Section 17 (1) (b) (1A) and Regulation 3 of the Road Accident Fund Amendment Act, Act 19 of 2005

WHEREFORE defendant prays that Plaintiffs line be dismissed with costs.”

16. No basis is laid on the special plea as to why the defendant holds the view that this Court does not have jurisdiction.
17. In paragraph 11 of the plea where the defendant answers to the plaintiff’s allegation that this Court has the necessary jurisdiction, it simply states as follows:

“The Defendant has no knowledge of any allegations contained in this paragraph, accordingly does not admit or deny same and Plaintiff is put to the proof thereof.”

18. The defendant again failed to set out the grounds why it is of the view that this Court does not have jurisdiction to deal with the matter.
19. In argument, and in my view correctly so, the plaintiff relied on Road Accident Fund v Rampukar; Road Accident Fund v Gumede
- [11] where it was found that the Road Accident Fund has its principal place of business for purposes of section 19 (1) within the area of jurisdiction of the Transvaal Provincial Division.

20. I am therefore satisfied that this Court has the necessary jurisdiction in order to deal with the matter, and the special plea of jurisdiction is therefore dismissed with costs.

SPECIAL PLEA : PREMATURE SUMMONS

21. Again, the defendant raises a special plea, and in the plea itself deny the compliance, without setting out a basis on which it makes this denial. It simply boldly and vaguely so state that the plaintiff failed to exhaust the process and remedies available to him in terms of Regulation 3 of the Road Accident Fund Amendment Act.
22. It is unclear on what grounds the defendant is of the view that the summons was issued premature. It is not the Court's function to guess as to what is the case of a party before it.
23. I therefore find that there is no merit in this special plea, and the special plea of premature summons is dismissed with costs.

SPECIAL PLEA: NON-COMPLAINT WITH REGULATION 3 (1) (a) AND (b) OF THE ROAD ACCIDENT FUND ACT, ACT 19 OF 2005

24. In the third special plea filed, the defendant states that the plaintiff has failed and/or refused to submit himself to the statutorily prescribed assessment procedure and methods stipulated in Regulation 3 (1) (a) of the Road Accident Fund Amendment Act. The defendant further pleads exclusion of liability in terms of Section 17 of the Road Accident Fund Act, read together with Regulation 3, in that the Plaintiff has failed or neglected to prove per statutory prescribed method of assessment of serious injuries, that he has sustained a serious injury as defined by the Amendment Act read together with Regulation 3.
25. In considering this special plea, it is necessary that one set out a timeline. The timeline of relevant events, can be summarised as follows:

25.1 The accident occurred on 19 November 2013; [12]

25.2 The RAF1 form, dated 1 March 2016, was served on the Defendant on 16 November 2013; [13]

25.3 The Plaintiff furnished the Defendant with a Serious Injury Assessment Report, the RAF4, dated 7 June 2016 by Dr CW Goosen, as contemplated in Section 17 (1) of the Act and Regulation 3 of the Regulations promulgated in terms of the Act, within the prescribed period of 15 July 2016; [14]

25.4 Dr CW Goosen (RAF4) and medical legal report dated 7 June 2016 was also served on the Defendant on 27 February

2018. [15]

25.5 Summons was served on the Defendant on 31 August 2017. [16]

26. This special plea is wholly without any merit. I agree with the argument of Adv Percival that the plea raised is based on the fact that third party who wishes to claim compensation for non-pecuniary loss shall submit himself to an assessment by a medical practitioner in accordance with the regulations, and the Plaintiff failed to do so. This averment by the Defendant is factually incorrect. This is clear from the events set out in the timeline above.
27. The special plea for the non-compliance with Regulation 3 is therefore dismissed with costs.

SEPERATION OF ISSUES

28. As is already alluded to, the plaintiff requested to only proceed on the question of merits and he sought a separation of aspects. The separation of the issues were also agreed to between the parties in the pre-trial before the Honourable Justice Kollapen.
29. I was satisfied that it was convenient for the aspects to be separated.
30. I therefore granted an order for the separation of the issues, and the matter proceeded on the question of merits (liability) only.

EVIDENCE BY WAY OF AFFIDAVIT IN TERMS OF RULE 38 (2) AND REQUEST TO PROCEED WITH THE TRIAL BY WAY OF VIDEO CALL

31. At the beginning of the trial, Adv Percival who appeared on behalf of the plaintiff, requested that the trial proceed by way of video call and further he requested a directive whether I will be willing to accept the statutory affidavit filed by the plaintiff and the independent witness, or whether they should testify.
32. He had two witnesses available, the plaintiff himself as well as an independent witness who was also a passenger on the TLB at the time of the accident.
33. Firstly, we are living in trying times and difficult times. Not only locally but also globally, we are haunted by Covid19, and we need to make provision for times like this. In general, in civil proceedings oral testimony is given by the plaintiff in a court of law. Giving evidence through video link and other social media mechanism was until recently a novelty in South Africa, save to the very limited extent in the criminal courts. And as already alluded to, we are haunted by a pandemic which make the use of video link and other mechanisms a necessity. Technology is at this stage of our lives so advanced to a point that direct evidence can be taken from a witness in anther province or country, and cross-examination can take place whilst the

witness is visible to all.

34. Our laws do not cater for all the instances where the applicant cannot give oral evidence in court. The Civil Proceedings Act 25 of 1965 provides in s 24 for Depositions of Witnesses to be taken on a commission. Rule 38 of the Uniform Rules of Court provides for various procedures to produce evidence for trial. It also provides for the manner in which evidence will be adduced at trial. Rule 38(3) provides for taking of evidence of a witness before or

during the trial before a commissioner of the court; rule 38(5) provides that unless the court directs such examination to be by interrogations and cross interrogations, the evidence of any witness to be examined before the commissioner in terms of an order granted under subrule (3) shall be adduced upon oral examination in the presence of the parties, their advocates and attorneys, and the witness concerned shall be subject to cross-examination and re-examination.

35. As is correctly pointed out by the Honourable Justice Mbatha in *M K v Transnet Ltd t/a Portnet*

[17] “The granting of orders as regulated in rule 38 are within the discretion of the court, a discretion which is exercised judicially. The main consideration being whether if evidence is placed before the court in this manner; justice is likely to be done. The applicant has to depose to an affidavit, give reasons why it is necessary for the purposes of justice to depart from the norm; the nature of the evidence to be given; names of witnesses and if it is convenient and necessary for the purposes of justice. This is a jurisdictional

factor: ‘A party seeking to dispense with a personal appearance of a witness must show that it is “necessary for the purposes of justice that the ordinary way of taking evidence should be departed from”. [18] The convenience must not only be for the applicant but also for the respondent and the court. [19]”

36. The plaintiff did not file an affidavit setting out the aspects referred to above, but I have debated some of these issues with Adv Percival. The High Court, however, has powers to regulate its own processes in the interest of justice besides the powers bestowed upon it in terms of the statute. That power is now enshrined in section 173 of the Constitution.

37. After considering my debate with Adv Percival, and given our new normality under the Covid19 pandemic, and the directives laid down in the Practice Directive of this division I am satisfied that the evidence that the plaintiff wishes to place before me is relevant to the issues before me. It is also convenient to deal with the evidence by way of affidavit. The defendant did not appear before me, and it also failed to provide its attorney of record to appear before me. I was satisfied that the affidavits filed is sufficient, and I have made a ruling in terms of Rule 38 (2) that the affidavits can be accepted as evidence, and that

there is no need for the witnesses to testify.

38. At this juncture I need to pause and mention, that one of the aspects that convinced me to deal with the matter in this manner was the fact that no sworn translator was available to assist the Court in the leading of the evidence. The receptionist of the attorney, however, is conversant in the language of both the witnesses, but she is not a sworn translator. The only reason why a sworn translator was not available was the restrictions under Level3 Lockdown. I have, however, relied on the receptionist to assist me in confirming that the affidavits are indeed the affidavits of the witnesses, and that it is indeed their signatures.

39. As I have indicated, two witnesses were available to testify. The only thing I have requested the Plaintiff to do is get both the witnesses to confirm the affidavits, that they have knowledge of the affidavits and that is their signatures at the end of the documents. This was duly done via the Teams Meeting that was set up. The reasons I have allowed this is already dealt with herein above.
40. I was therefore satisfied that the matter could proceed on the affidavits.

EVIDENCE BEFORE THE COURT

41. The first affidavit that was placed before me as evidence was that of the plaintiff himself. He confirmed his signature and he confirmed that the contents of the affidavit were read back to him at the time he deposed thereto.
42. His evidence as to how the accident happened can be summarised as follows:
- 42.1 He is an adult male, and was employed by Gobonzela Construction from 16 January 2013 until 30 July 2014. His function was to assist with the picking up of stones and rocks and moving the stones and the rocks to a central place where it was collected by a truck;
- 42.2 While he was in the employ of Gobonzela Construction, he was stationed at Pitse Lodge, Welgevonden Game Reserve in Limpopo Province;
- 42.3 On 19 November 2013, and while he was at the place of his employment, him and his co-workers were busy picking up stones next to the gravel road. This specific morning, they were 5 people at the spot they were working;
- 42.4 During the course of the morning they had to move to a different spot in order to continue to pick up stones. They were supposed to go around a mountain, and the driver of the TLB said that they will drive to that area in the TLB;
- 42.5 The driver of the TLB and one other person sat on the seat of the TLB and the remainder three, including the plaintiff, climbed into the loader bucket of the TLB;
- 42.6 The road that they used to travel to the next spot is a gravel road, and not level;
- 42.7 The loader bucket of the TLB then lifted and threw the plaintiff out. He fell onto the left wheel and the TLB kept on going and rode over his right shoulder;
- 42.8 The TLB came to a standstill a distance further where his co-workers assisted him;
- 42.9 The driver of the truck went back to the camp site and went to fetch a truck. The plaintiff was loaded into the truck and transported back to the camp site, where an ambulance was already waiting. After being loaded into the ambulance, he was transported to a hospital, and then airlifted to another hospital.
43. The plaintiff sustained the following injuries:
- 43.1 Broken right shoulder – there is a pin inside;

43.2 Broken ribs;

43.3 Lacerations on the spinal cord – which is still sore.

44. The second affidavit that was placed before me and which I have accepted as evidence, is that of Mr Rollen Nyalunga. Mr Nyalunga was also present in the teams meeting, and I also requested him to confirm his signature, that the affidavit is his evidence, and that he does not want to add anything to this affidavit. His evidence as to how the accident happened can be summarised as follows:

44.1 He is in the employ of Gobonzela Construction as a supervisor and he is employed in this position since 2007;

44.2 On the morning of 19 November 2013 he was working at Pitse Lodge, Welgevonden Game Reserve, and he was working with inter alia the plaintiff;

44.3 On the morning in question the plaintiff and four other co-workers were busy picking up stones next to the gravel road;

44.4 During the course of the morning they had to move to another section where they would continue to pick up stones and rocks. In order to get to the next spot they had to travel around a mountain and he said to they workers that they must climbed into the bucket of the TLB and not walk on foot as there were estranged and dangerous animals that would attack them if walking by foot;

44.5 The TLB was driven by a certain Cedric Mahkhowho, and he was sitting next to the driver;

44.6 Three people, including the plaintiff, got into the bucket of the TLB. The plaintiff was seated on the left side of the bucket of the TLB, next to the wheel;

44.7 The road they travelled on was a gravel road and not level;

44.8 The left wheel of the TLB drover over a rock and the loader of the TLB then lifted and with the result the plaintiff was thrown out;

44.9 The driver of the vehicle could not stop in time, and ended up stopping a distance further. This is when they have discovered that he was injured to his right shoulder;

44.10 A truck was fetched and the plaintiff was transported back to the camping site with the truck, and then transported to a hospital with an ambulance.

APPLICABLE LEGAL PRINCIPLES

45. The first question Adv Percival on behalf of the plaintiff argued before me was the question whether a TLB was indeed a motor vehicle.

He relied on the judgment in the matter of Nekokwane v Road Accident Fund [20].

46. It is trite law that the defendant is obliged to compensate any person for any loss or damage which such person has suffered as a result of any bodily injury to him/her-self, caused by or arising from the driving of a motor vehicle. [21] It is equally trite that the motor vehicle that causes the bodily injury to a third person must be a motor vehicle capable of been propelled by any mechanical, animal or human power or by gravity as provided in terms of the provisions of section
20. For ease of reference, section 20 provides:
- (1) For the purposes of this Act a motor vehicle which is being propelled by any mechanical, animal or human power or by gravity or momentum shall be deemed to be driven by the person in control of the vehicle.
 - (2) For the purposes of this Act a person who has placed or left a motor vehicle at any place shall be deemed to be driving that motor vehicle while it moves from that place as a result of gravity, or while it is stationary at that place or at a place to which it moved from the first-mentioned place as a result of gravity.
 - (3) Whenever any motor vehicle has been placed or left at any place, it shall, for the purposes of this Act, be presumed, until the contrary is proved, that such vehicle was placed or left at such place by the owner of such vehicle.
47. On the pleadings before the Court, the defendant did not seriously contested that a TLB is indeed a motor vehicle.
48. I am mindful of the judgment in the matter Berry and Another v SPE Security Patrol Experts and Another [22] and I am satisfied that a TLB construction machine is indeed a motor vehicle for purposes of the provisions of the Act. This is something I have already stated during the argument by Adv Percival.
49. From the evidence before me, it is clear that the plaintiff was a passenger at the time of the accident. It is trite law that a passenger, in this case the plaintiff, only needs to prove that the driver of the vehicle was 1% negligent, then he should be 100% successful in his claim.
50. The question arises whether the plaintiff before me succeeded to prove that the driver of the TLB was 1% negligent. The uncontested evidence before me was that the driver of the TLB drove over a rock and lost control, the plaintiff was then thrown from the bucket of the TLB. There is nothing that suggests that the driver was not 1% negligent. I also have no doubt in my mind that the plaintiff managed to cross this hurdle.
51. I also deem it prudent to briefly deal with what was pleaded, as not even the plea raised a real defence. In its plea, and in answer to the allegations as to how the accident occurred, the defendant pleaded as follows:

“4.2 The Defendant pleads that the collision was not caused as a result of negligence on the part of the insured driver as alleged or at all, but solely through the negligent conduct on the part of the driver of the motor vehicle in which plaintiff was a passenger.

4.3 Alternatively, and in the event that the above Honourable Court finds that the insured driver were negligent (which is still denied) then and in that event the Defendant pleads that such negligence did not in any way contribute to the said collision, which was caused solely by the negligence of the driver of the motor vehicle in which plaintiff was a passenger, who was negligent in one or more or all of the following respects:

4.3.1 He failed to keep a proper lookout;

4.3.2 He travelled at an excessive speed in the circumstances;

4.3.3 He failed to avoid the collision when by the exercise of due and reasonable care he could and should have done so;

4.3.4 He failed to take cognizance of the insured driver's actions or intended actions;

4.3.5 He failed to take into consideration the presence of other road users and in particular to the insured vehicle”.

52. This plea is totally non-sensical. Unfortunately, there was no appearance before me due to a lack of instructions by the defendant to its attorney of record, and I could not obtain any insight as to the basis for this plea, let alone what this plea means.

53. That being said, the plea refers to a second vehicle, while it is clear that it is a single vehicle accident.

54. In addition, even in the plea it is specifically stated that the driver of the vehicle in which the plaintiff was a passenger was negligent and the sole cause of the accident. In my understanding of what was pleaded, it concedes the issue of negligence on the side of the driver in which the plaintiff was a passenger. On a narrow and strict interpretation it means that the defendant admitted negligence, and therefore the 1% was admitted. In my mind there was therefore no triable issue on the question of the merits. Despite this, no concession of the merits was forthcoming.

55. During his argument, Adv Percival referred me to the judgment in the matter of Protea Assurance Co Ltd v Matinise

[23] where a drunk person fell off an open-sided flat bed whilst in motion. In that matter an apportionment was ordered. I explored the rationale behind this apportionment with Adv Percival and asked him whether the facts before me do not warrant an apportionment against the plaintiff as he placed himself in a dangerous situation, and whether this is not a matter where I need to consider an apportionment. In his heads of argument he correctly indicated that as soon as I find that there is 1% negligence on the side of the driver of the vehicle, then the claim should succeed, and then the plaintiff is entitled to 100% of

his agreed or proven damages.

56. I actually should not even consider the argument of apportionment, which was raised by me.
57. The defendant did not raise the defence of *folenti non fit iniuria* in its plea, and I therefore cannot even consider any apportionment against the plaintiff. And with this I do not form the opinion or make a finding that such a plea would have been successful. The contrary is true.
58. I am therefore satisfied that the Plaintiff proved that the driver of the insured vehicle was 1% negligent. His claim therefore should succeed.

COSTS

59. There is no reason why the costs should not follow the outcome.

ORDER

60. The draft order attached hereto and marked “SS” is made an order of court.

N ERASMUS

FOR PLAINTIFF: ADV H PERCIVAL

INSTRUCTED BY: NEL VAN DER MERWE & SMALMAN INC

FOR DEFENDANT: NO APPEARANCE

“SS”

GAUTENG DIVISION, PRETORIA

PRETORIA, 20 JULY 2020

BEFORE HER LADYSHIP: ERASMUS AJ

CASE NUMBER: 59973/17

MZIMBA: JOSEPH OUPA

PLAINTIFF

and

ROAD ACCIDENT FUND

DEFENDANT

DRAFT ORDER

After having considered the evidence before me and after having heard counsel for the Plaintiff,

IT IS ORDERED THAT:

1.

The Defendant is liable to pay 100% (HUNDRED PERCENT) of Plaintiff's proven or agreed damages.

2.

The Defendant is to pay the Plaintiff's taxed or agreed party and party costs relating to the issues of the Defendant's

liability, up to the date of this order, which costs shall include (but not be limited to), the following :

2.1 The cost of counsel on senior/junior scale, which costs include but is not limited to:

2.1.1 reasonable preparation for trial;

2.1.2 day fee for handling trial on 4 February 2020, and 14 July 2020;

2.1.3 drafting a Joint Practice Note;

2.1.4 drafting of Advice on Evidence;

2.1.5 drafting Heads of Argument; and

2.2 The reasonable and taxable travelling costs of the Plaintiff's attorney attending an inspection in loco;

2.3 The costs of preparation of the bundles on merits for purposes of trial;

2.4 The costs of Plaintiff's attorney and counsel for preparing for and attending the pre-trial conferences, as well as the reasonable

travelling costs of plaintiff's attorney for attending the pre-trial conference and trial;

2.5 The reasonable costs in respect of travelling, travelling time, and accommodation (if any) in respect of the following necessary

witnesses for attending the trial :

2.5.1 Joseph Oupa Mzimba;

2.5.2 Ronald Nyalunga.

2.6 The reasonable costs for preparation for trial;

2.7 The Defendant is to pay the Plaintiff's taxed or agreed party & party costs of the action directly into the Trust Account of Philip Meyer Prokureurs Inc, details of which are as follows:

Account holder - Philip Meyer Prokureurs Inc

Bank

- FNB

Branch

- Commercial Account Services

Type Account - Attorney Trust / Cheque Account

Account number - [...]

Branch Code - 250655

Ref. Number - L80/14

3.

Should the Defendant fail to pay the Plaintiff's party & party costs as taxed or agreed within 14 (fourteen) days from date of taxation, alternatively date of settlement of such costs, the Defendant shall be liable to pay interest at the applicable rate of 7,25% per annum as published in the Government Gazette on such costs as from and including the date of taxation, alternatively settlement of such costs up to and including the date of final payment thereof.

4.

The Plaintiff shall, in the event that the parties are not in agreement as to the costs referred to in paragraph 2 above, serve the notice of taxation on the Defendant's attorneys of record and shall allow the Defendant seven court days to make payment of the taxed costs.

5.

That the issues relating to the merits and the quantum of the Plaintiff's claim be separated in terms of Rule 33(4) of the Uniform Court Rules, and the issues in respect of the quantum of the Plaintiff's claim be postponed sine die.

6.

The three special pleas raised by the Defendant in its plea filed on 4 October 2017 are dismissed with costs.

BY ORDER

REGISTRAR

Attorney for the Plaintiff: Philip Meyer Prokureurs Inc

Me Marisa Meyer

Cell: 0825767524

Counsel for the Plaintiff: Adv Herman Percival

Cel: 083 444 7011

Counsel for the Defendant: No Appearance

Attorney for the Defendant: No Appearance

Representative of the RAF: No Appearance

- [1] See Plaintiff's Amended Particulars of Claim, dated 28 October 2019, and more specifically paragraph 3.1 thereof
- [2] See Plaintiff's Amended Particulars of Claim, dated 28 October 2019, and more specifically paragraph 3.1 thereof
- [3] See Plaintiff's Heads of Argument, bundle 28 on Caselines, page 28-2, paragraph 1.4 Also see Bundle 4 on Caselines, pages 383
- [4] See Plaintiff's Heads of Argument, bundle 28 on Caselines, page 28-2, paragraph 1.4
- [5] See Plaintiff's Heads of Argument, bundle 28 on Caselines, page 28-2, paragraph 1.4
- [6] See Plaintiff's Heads of Argument, bundle 28 on Caselines, page 28-2, paragraph 1.4
- [7] See Plaintiff's Heads of Argument, bundle 28 on Caselines, page 28-2, paragraph 1.4
- [8] See Plaintiff's Heads of Argument, bundle 28 on Caselines, page 28-2, paragraph 1.4
- [9] See Plaintiff's Heads of Argument, bundle 28 on Caselines, page 28-2, paragraph 1.4
- [10] See Plaintiff's Heads of Argument, bundle 28 on Caselines, page 28-2, paragraph 1.4
- [11] 2008
- (2) SA 534 (SCA) at 536B
- [12] See Plaintiff's Amended Particulars of Claim, paragraph 3.1, bundle 1 on Caselines, page 3-8
- [13] See Merits Bundle, Volume 1, page 12
- [14] See Expert Bundle, pages 1-6
- [15] See Notice Bundle Volume 4, on page 326
- [16] See Pleadings Bundle on page 23
- [17] A105/2004, judgment handed down on 20 August 2018 in Kwazulu-Natal Local Division, Durban
- [18] A C Cilliers, C Loots and H C Nel, Herbstein and Van Winsen: Civil Practice of the High Courts and the Supreme Court of South Africa 5ed (2009) ch33 – 859; Hills v Hills (II) 1933 NPD 293 at 294
- [19] Myerson v Health Beverages (Pty) Ltd 1989
- (4) SA 667 (C) at 675J – 676A

[20] 2019 JDR 0577 (CC)

[21] Section

17. Liability of Fund and agents.—(1) The Fund or an agent shall— (a) subject to this Act, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of the owner or the driver thereof has been established; (b) subject to any regulation made under section 26, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of neither the owner nor the driver thereof has been established, be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person at any place within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee: Provided that the obligation of the Fund to compensate a third party for non-pecuniary loss shall be limited to compensation for a serious injury as contemplated in subsection (1A) and shall be paid by way of a lump sum;...

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[22] 2011

(4) SA 520 (GNP)

[23] 1978

(1) SA 963 (A)

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